

HOUSE BILL 3081

By Carr

AN ACT to amend Tennessee Code Annotated, Title 67,  
relative to enact the Food Tax - Adult Materials  
Tax Swap Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Food Tax – Adult Materials Tax Swap Act".

SECTION 2. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following as new subdivisions to be appropriately numbered:

( ) "Adult bookstore" means a business that offers, as its principal or predominate stock or trade, sexually-oriented material, devices, or paraphernalia, whether determined by the total number of sexually-oriented materials, devices or paraphernalia offered for sale, by the percent of its total sales or its profits, by the retail value of such materials, devices or paraphernalia, specified sexual activities, or any combination or form thereof, whether printed, filmed, recorded or live, or that in part or in whole restricts or purports to restrict admission to adults or to any class of adults. "Adult bookstore" specifically includes items sexually-oriented in nature, regardless of how labeled or sold, such as adult novelties, risqué gifts or marital aids;

( ) "Adult materials" means those materials whose display to minors is limited by § 39-17-914;

( ) "Escort" means a person who, for monetary consideration in the form of a fee, commission, salary or tip, dates, socializes, visits, consorts with, accompanies, or offers to date, socialize, visit, consort or accompany to social affairs, entertainment or places of amusement or within any place of public resort or within any private quarters of a place of public resort;

( ) "Escort service" means a person as defined in this section, who, for a fee, commission, profit, payment or other monetary consideration, furnishes or offers to furnish escorts or provides or offers to introduce patrons to escorts;

( ) "Nude or partially denuded individual" means an individual with any of the following less than completely and opaquely covered:

(A) Genitals;

(B) The pubic region; or

(C) A female breast below a point immediately above the top of the areola; and

( ) "Service-oriented escort bureau" is an escort bureau that:

(A) Maintains an open office at an established place of business;

(B) Does not use an escort bureau runner; and

(C) Does not advertise that sexual conduct will be provided to a patron;

( ) "Service-oriented escort" is an escort that:

(A) Operates from an open office;

(B) Does not employ or use an escort runner;

(C) Does not advertise that sexual conduct will be provided to the patron or work for an escort bureau that so advertises; and

(D) Does not offer or provide sexual conduct; and

( ) "Sexually-explicit business" means a business at which any nude or partially denuded individual, regardless of whether the nude or partially denuded individual is an employee of the sexually-explicit business or an independent contractor, performs any service:

(A) Personally on the premises of the sexually-explicit business; and

(B) During at least thirty (30) consecutive or nonconsecutive days within a calendar year for:

- (i) A salary;
- (ii) A fee;
- (iii) A commission;
- (iv) Hire;
- (v) Profit; or
- (vi) Any other compensation.

SECTION 3. Tennessee Code Annotated, Section 67-6-212, is amended by adding the following new subsections thereto:

(f) In addition to any other applicable tax, there is levied a tax of twenty-five percent (25%) on the sale or rental of personal property, membership dues and fees, sales of tickets or other charges for admission, entering into or engaging in any kind of recreational activity or viewing any motion picture for which a fee is charged in any adult bookstore or any sexually-explicit business. The sale or rental of personal property subject to this tax shall include, but not be limited to, sexually-oriented material, devices, or paraphernalia, including adult novelties, risqué gifts or marital aids.

(g) In addition to any other applicable tax, there is levied a tax of twenty-five percent (25%) on an escort service or service-oriented escort bureau on amounts paid or charged by such escort bureaus for any transaction that involves providing an escort to another individual.

(h) In addition to any other applicable tax, there is levied a tax of twenty-five percent (25%) on individual charges for viewing sexually-explicit movies received from cable and wireless cable television channels or in hotels or motels.

(i) In addition to any other applicable tax, there is levied a tax of twenty-five percent (25%) on magazines, books and other adult materials that are restricted to viewing by minors pursuant to § 39-17-914.

(j) In addition to any other applicable tax, there is levied a tax of twenty-five percent (25%) on advertising for a sexually-oriented business, adult cabarets, adult bookstores, escort services, service-oriented escort bureaus and sexually-oriented escort bureaus.

(k) Nothing in subsections (f) - (j) shall apply to motion pictures designated by the rating board of the Motion Picture Association of America by the letter "R" for restricted audiences, persons under seventeen (17) years of age not admitted unless accompanied by parent or adult guardian, or the designation "NC-17", persons under seventeen (17) years of age not admitted.

SECTION 4. Nothing in this act shall apply to any contraceptive device or to any medication that is prescribed by a physician and that is intended to enhance sexual performance or sexual enjoyment.

SECTION 5. Tennessee Code Annotated, Section 67-4-1702(a), is amended by adding a new subdivision thereto, as follows:

( ) Persons entertaining or performing for remuneration in adult cabarets as defined in § 7-51-1401;

SECTION 6. Privilege taxes imposed on persons entertaining or performing for remuneration in adult cabarets as defined in § 7-51-1401 shall be remitted before any such performer shall be authorized to entertain or perform in an adult cabaret.

SECTION 7. There is established a general fund reserve to be allocated by the general appropriations act, which shall be known as the food tax reduction fund, hereafter referred to as the "fund." Any moneys arising from this act shall be allotted to the fund. Beginning July 1,

2013, moneys from the fund may be expended to fund reductions in the state sales taxes on food and food ingredients for human consumption. Any revenues deposited in this reserve shall remain in the reserve until expended for purposes consistent with this act, and shall not revert to the general fund on any June 30. Any excess revenues and interest on such revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years.

SECTION 8. The commissioner of revenue is authorized to promulgate rules and regulations pursuant to title 4, chapter 5, to implement the provisions of this act.

SECTION 9. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect at 12:05 a.m. on July 1, 2012, the public welfare requiring it.